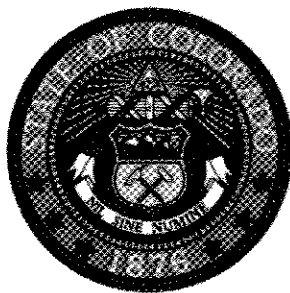


STATE OF COLORADO
Department of State

1700 Broadway
Suite 250
Denver, CO 80290



Mike Coffman
Secretary of State

Holly Z. Lowder
Director, Elections Division

NOTICE OF FINDINGS & CONCLUSIONS
Petition Request for Rulemaking

Office of the Secretary of State
July 16, 2008

IN THE MATTER OF THE PETITION OF THE COLORADO FEDERATION OF REPUBLICAN WOMEN, PETITIONER, TO AMEND RULE 4.20 OF THE COLORADO SECRETARY OF STATE RULES CONCERNING CAMPAIGN AND POLITICAL FINANCE [8 CCR 1505-6].

FINDINGS AND CONCLUSION REGARDING PROPOSED RULE AMENDMENT

BACKGROUND

Upon the petition of Scott E. Gessler on the behalf of members of the Colorado Federation of Republic Women (CFRW), pursuant to section 24-4-103 (7), C.R.S., for an amendment to Rule 4.20, the Secretary of State in his discretion commenced action on the petition in accordance with the State Administrative Procedures Act. After proper notice, the Secretary of State, by and through the Deputy Secretary of State, conducted a public hearing on this matter concurrently with a Campaign and Political Finance Rule-making Hearing on July 1, 2008.

At the rule-making hearing, Mr. Gessler provided testimony on the behalf of members of CFRW. In addition to arguments presented by Mr. Gessler, testimony was given by Ryan Call of Zakhem Atherton, LLC and on behalf of the Colorado Republican Party. Testimony was also presented by CFRW members including: Jacque Stafford, Sharon Sollenbarger, Janine Shuster, and Linda Sanchez. Cathy Percefull of the CFRW read written testimony submitted by Kelly Weist, General Counsel to the Colorado Federation of Republic Women, into the record. President Ruth Dolan and Treasurer Ruth Shroyer of the Denver Women's Republican Club also testified at the hearing. Additionally, the Secretary of State received written comment from: Kathi Kier, President of Collegiate Peaks Republican Women's Fund; Frances Ruth Ehlers, 2nd Vice President of Mesa County Republican Women; Margaret N. Gramm, CFRW 2nd Vice President and Kit Carson County Republican Women Treasurer; Janet Blackman, President of Mesa County Republic Women; and Carol Alexander, Evergreen, Colorado resident.

The proposal considered at the hearing was an amendment to Rule 4.20.1 relating to Political Organizations and disclosure of contributions and expenditures requirements. Rule 4.20.1 as amended December 14, 2007, states as follows:

- 4.20.1 Pursuant to 1-45-108.5, C.R.S., political organizations shall only report contributions and expenditures for the purpose of "influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any state or local public office."

The specific amendment proposed by Mr. Gessler is the addition of the following language to the rule or a proposed new rule:

THE TERM "INFLUENCING OR ATTEMPTING TO INFLUENCE" SHALL MEAN EXPRESSLY ADVOCATING THE ELECTION OR DEFEAT OF A CANDIDATE OR MAKING AN ELECTIONEERING COMMUNICATION.

Pursuant to section 1-1-107 (2) (a), C.R.S., the Secretary of State has authority "to promulgate, publish, and distribute...such rules as the secretary of state finds necessary for the proper administration and enforcement of the election laws."

DISCUSSION


The petition submitted by Mr. Gessler requested the Secretary of State "to issue a new rule defining what 'contributions' or 'spending' must be reported by political organizations that have a purpose of 'influencing or attempting to influence the selection, nomination, election, or appointment of any individual to state or local public office.'" In addition to rule-making, the petition requests the Secretary of State to seek an advisory opinion from the Attorney General regarding the current reporting requirements for political organizations. Mr. Gessler presents the argument that the term "influence" must be limited, or else the term is unconstitutionally vague; and that the state may only regulate communications that are express advocacy or the functional equivalent of express advocacy.

In summary, written comments and testimony received indicate that clubs such as the Mesa County Republican Women, Kit Carson County Republican Women, Collegiate Peaks Republican Women's Forum, and CFRW are negatively impacted by Rule 4.20 reporting requirements and therefore representatives of the clubs support the proposed amendments to Rule 4.20. However, whether these clubs are within the intended scope of the definition of political organizations in relation to reporting requirements is at issue.

CONCLUSION

After considering the petition request and testimony received at the public hearing conducted on July 1, 2008, the Secretary of State will seek a formal opinion from the Attorney General as to the intended meaning and scope of definition of "political organization" pursuant to section 1-45-103 (14.5), C.R.S., in relation to reporting requirements. The Secretary of State will defer further consideration of rulemaking until after receipt of a formal opinion from the Attorney General.

Dated this 16th Day of July, 2008.



William A. Hobbs
Deputy Secretary of State

For

Mike Coffman
Colorado Secretary of State